UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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S & L VITAMINS, INC.,

Plaintiff,

-against-

AUSTRALIAN GOLD, INC.,

Defendant/Counterclaimant,

and a third party action.
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ORDER

CV 05-1217 (JS)

ORENSTEIN, Magistrate Judge:

The plaintiff moves by letter application for a protective order striking a subpoena dated March 30, 2006 based upon violation of the scheduling order entered by the Court on July 25, 2005. *Coleman Letter*, dated April 4, 2006.[1]

The defendant opposes the application asserting that the subpoena was timely. *Matthews Letter*, dated April 6, 2006.

The motion is granted. The scheduling order entered on July 25, 2006, stated in material part:

> The discovery completion date specified in any pre-trial order is the last day to serve discovery responses. To be timely, discovery requests must be served sufficiently in advance of the discovery completion date for responses to be served prior to the discovery completion date.

Order, dated July 25, 2005, Orenstein, M., M.J. Similar language was set forth in this Court's Orders dated October 20, 2005, December 20, 2005 and March 31, 2006.

The defendant dated the subject subpoena March 30, 2006. The subpoena sought documents to be produced for inspection and copying on or before April 13, 2006.

According to the scheduling order dated July 25, 2005, the Court directed fact discovery to be completed by March 31, 2006. The non-party's response to the subpoena was required by April 13, 2006 beyond the fact discovery completion deadline.

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[1] Movant filed a reply letter. The Court does not consider reply letters. Local Civil Rule, 30.3(c).

Although plaintiffs may not have standing to quash a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure, a party may move for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, particularly when a discovery request is in violation of a discovery scheduling order.

Defendant's assertion that the subpoena was served prior to the close of discovery is of no moment. It should have been served no later than March 17, 2006, and it was not.

Finally, the Court notes that the subpoena is improper since it seeks financial documents from a non-party reflecting the finances of non-parties.

For the reasons stated the subpoena is vacated, defendants shall return all documents to the subpoenaed non-party and file a certificate of counsel that it destroyed all photostats or computer scanned entries or computer entries from the material obtained.

SO ORDERED.

Dated: Central Islip, New York
April 19, 2006

MICHAEL L. ORENSTEIN
United States Magistrate Judge